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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

No.

KAREN AND MICHAEL DERZACK,

Petitioners,

v.

ALLEGHENY COUNTY CHILDREN & YOUTH SERVICES

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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13 pp

QUESTION PRESENTED FOR REVIEW

Did it violate due process of law to remove two children from their prospective adoptive family when no notice was provided to the family that placement of the children would be addressed at the court hearing resulting in the removal order?

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PARTIES TO THE PROCEEDING

A list of parties to the proceeding in the Supreme Court of Pennsylvania is as follows:

Karen Derzack and Michael Derzack, Petitioners
c/o Kathleen A. Cribbins, Esq.
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Allegheny County Children & Youth Services
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Pittsburgh, PA 15222

Byron & Byrae Griffin
c/o Georgene Siroky, Esq.
Legal Aid for Children
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Pittsburgh, PA 15203

OPINIONS BELOW

The Opinions of the Superior Court of Pennsylvania, of the Court En Banc and of the Hon. Joseph A. Jaffe of the Court of Common Pleas of Allegheny County are filed at Appendix 2A - Appendix 150A.

JURISDICTION

The Supreme Court of Pennsylvania entered judgment affirming the decision of the Superior Court of Pennsylvania on September 8, 1997. This Petition for a Writ of Certiorari was filed within ninety (90) days of judgment by the Pennsylvania Supreme Court. This Honorable Court's jurisdiction is invoked under 28 U.S.C. Section 2106.

STATEMENT OF THE CASE

Byrae Lafay Griffin was born on July 30, 1991. Her younger brother, Byron Todd Griffin, was born on July 15, 1992. Both children are African-Americans. They were born addicted to drugs.

Byron was adjudicated dependent after his mother, LaShawn Jeffrey, abandoned him following his birth. At the age of six days, he was placed in the home of Michael and Karen Derzack, a white foster care family with Family Services of Western Pennsylvania

(hereinafter "the Derzacks"). Byron stayed with the Derzacks until, in December of 1992, the Derzacks conveyed to Allegheny County Children and Youth Services (hereinafter "CYS") their desire to adopt Byron. CYS promptly notified the Derzacks that Byron would be removed from their home due to a formal transracial placement policy banning the "displacement" of African American children in white homes.

On October 6, 1994, the trial court placed both Byrae and Byron with the Derzacks as prospective adoptive parents. See October 6, 1994 Order of Court at Appendix 151A. In a subsequent order, the trial court terminated Ms. Jeffrey's parental rights.

In 1995, CYS filed contempt petitions against the Derzacks alleging that the Derzacks had interfered with court ordered visitation, had failed to permit announced and unannounced visits of their home by CYS; had taken Byrae and Byron out of the jurisdiction without permission; had failed to correct errors on their

application to adopt Byrae and Byron and had violated the court's gag order.

A hearing on the CYS contempt petitions was held before a court *en banc* on December 13, 1995. The court took the matter under advisement.

On January 12. 1996, the attorney for the Derzacks' received an order dated January 10 scheduling a "brief hearing" for January 17, 1996 for relevant testimony on issues that may have arisen since the hearing of December 13, 1995. On January 13, 1996, their attorney received another order scheduling a continued contempt hearing for the Derzacks for January 17, 1996. No reasons were provided to counsel for holding the January 1996 hearing.

At the January 17, 1996 hearing, the Derzacks presented motions, including a Motion for a Continuance which objected to the hearing on the basis that any hearing for which the parties are not notified of the purpose is violative of due process. The Motion for a

Continuance was denied. See Transcript, Proceedings, January 17, 1996 at Appendix 155A.

The court announced its decision to remove Byrae and Byron from the Derzacks' care, based on testimony taken on December 13, 1995 and January 17, 1996, at the conclusion of the hearing. See Transcript, Proceedings, January 17, 1996 at Appendix 155A

A subsequent appeal to the Superior Court of Pennsylvania raised the issue of the violation of due process. See Brief of Appellant, Questions Presented for Review, at Appendix 161A.

The Derzacks' Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on September 8, 1997.

REASON FOR GRANTING THE WRIT

No person can be deprived of a property or liberty interest absent procedural due process. Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1975). The courts

have held procedural due process to be an absolute right. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 1053 (1978); Bradley v. Pittsburgh Board of Public Education, 913 V.2d 1064, 1077 (3d Cir. 1990).

The Derzacks became prospective adoptive parents following the October 6, 1994 Order of Court placing the subject minor children with them. By encouraging the type of long term parent-child relationships normally expected of biological families, the state has triggered due process protections. Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388 (1982) (recognizing that parents possess a fundamental liberty interest in the care and custody of their children that is protected by the Due Process Clause of the Fourteenth Amendment); Walker v. Johnson, 891 F.Supp. 1040 (M.D. Pa. 1955).

Fundamental fairness would require that the parties be notified that loss of custody was an issue to be addressed in the December 13, 1995 and January 17,

1996 proceedings and that they be given an adequate opportunity to defend themselves against the sanction sought. See, Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct.. 1487 (1985). No such notice or opportunity was provided to them.

Removal of children from their caretakers is not , under Pennsylvania law, an available remedy for the contempt petitions filed against the Derzacks. Choplosky v. Choplosky, 400 Pa. Super. Ct. 590, 584 A.2d 340 (1990); see also, Koslowski v. Koslowski, 362 Pa. Super. Ct. 516, 524 A.2d 995, 997 (1987). Consequently, the Derzacks had no notice that their children might be removed pursuant to the contempt proceedings. Additionally, they had no opportunity to prepare a defense to a request for removal.

On January 12, 1996, the Derzacks' attorney received a court order scheduling a "Brief Hearing" for January 17 to address "issues that may have arisen since the last hearing on December 13, 1995." Any

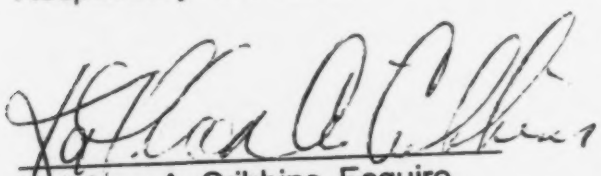
attempt to argue that an adequate defense to removal could have been presented on January 17, 1996 would be specious since the hearing was limited to matters arising **since** December 13.

Due process demands a meaningful opportunity to be heard. Armstrong v. Mango, 380 U.S. 545, 85 S.Ct. 1187 (1965). Where such a meaningful opportunity to be heard is lacking, due process is violated and the resulting order is unconstitutional.

CONCLUSION

It is respectfully requested that this Honorable Court grant review as the Petitioners were denied due process of law.

Respectfully submitted,



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